



KEY ISSUE PAPER NO. 1

UNDERSTANDING
COUNTRY

COUNCIL FOR ABORIGINAL RECONCILIATION

COUNCIL FOR ABORIGINAL RECONCILIATION

Understanding Country

*The Importance of Land and Sea in Aboriginal and
Torres Strait Islander Societies*

Australian Government Publishing Service
Canberra

© Commonwealth of Australia 1994

ISBN 0 644 32844 4

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Australian Government Publishing Service. Requests and inquiries concerning reproduction and rights should be addressed to the Manager, Commonwealth Information Services, Australian Government Publishing Service, GPO Box 84, Canberra ACT, 2601.

Author:

Dr Dermot Smyth

Consultant in Cultural Ecology

Unless otherwise captioned, Dr Smyth has also kindly supplied the photographs for this Key Issues Paper.

Project Officer
and Editor:

Ms Johanna Sutherland

Research Fellow, Reconciliation Projects, Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS).

Typeset and designed by Brown & Co., Canberra.

Produced by the Australian Government Publishing Service.

Contents

	Page
Preface	v
Introduction	1
Different peoples	2
What is 'country'?	2
In the beginning . . .	3
Sacred sites and Dreaming tracks	6
Owning and caring for country	7
Contemporary indigenous peoples' land and sea management	11
National parks	12
Marine parks	12
Fisheries management	13
Cultural sites	13
Community rangers	14
Community resource management agencies	14
Other land management projects	15
Aboriginal and Torres Strait Islander peoples' marine management	15
Aboriginal and Torres Strait Islander peoples' use of land and sea resources	16
Current recognition of indigenous peoples' land and sea interests	17
Hunting, gathering and fishing rights	17
Protection of cultural sites	19
Land rights	20
Sea rights	21

Native title on land and sea	23
The High Court native title decision	23
The implications of native title	23
Native title in the sea	24
Future recognition of indigenous peoples' land and sea interests	27
Torres Strait Islander peoples' land and sea interests	31
Relations with Papua New Guinea	32
Torres Strait Islanders on mainland Australia	32
Commercial utilisation of Torres Strait resources	32
Future management of Torres Strait land and sea	33
International developments	35
Conclusions	37
Endnotes	41
References and further reading	42
Publications and other resources available from the Council for Aboriginal Reconciliation or Commonwealth Government Bookshops	43

Preface

It was with some reservation, as a non-indigenous Australian, that I accepted the challenge to write about the significance of land and sea in Aboriginal and Torres Strait Islander societies. I was encouraged to do so on the basis that the paper primarily seeks to inform other non-indigenous Australians about these issues. Having spent some years involved in research and training projects relating to Aboriginal peoples' land and marine management, it was thought by the editor of this series of papers that I might be able to share some insights on these issues.

This paper, therefore, represents an attempt to pass on to fellow non-indigenous Australians some perspectives on the Australian environment which Aboriginal and Torres Strait Islander peoples have conveyed to me over the years. In that sense it is a means to repay the investment that indigenous Australians have made in their patient education of white-fellas like me who have been privileged to spend time in their company and in their countries. It is by no means an attempt to speak on behalf of Aboriginal or Torres Strait Islander peoples — that is something they do far more eloquently themselves.

Throughout the paper I have used direct quotations from Aboriginal and Torres Strait Islander persons, other writers and various government reports. However, since I have chosen the extracts and the use to which they have been put, this is inevitably a personal (and brief) introduction to very complex issues which are central to the lives of Australia's indigenous peoples.

Dermot Smyth



*Bloomfield River in north Queensland, traditionally
Kuuku Yalandji country.*

Introduction

From the moment of colonisation by Europeans, Aboriginal and Torres Strait Islander peoples have struggled physically, politically and through legal processes to gain recognition of their inherent right to own and manage their traditional lands, seas and resources. Though often forcibly moved and resettled long distances from their homelands, most Aboriginal peoples have never relinquished their attachment to their traditional country nor lost interest in being reunited with it.

Similarly, Torres Strait Islanders have retained a strong determination to regain control over their ancestral islands and surrounding seas. It is a determination that has survived 150 years of political domination, the impact of pearling and other maritime industries, immigration from Asia, Europe and Polynesia and the movement of many Torres Strait Islanders to mainland Australia over the last 30 years.

This paper aims to contribute to the process of reconciliation by helping all Australians understand why and in what ways land and sea continue to be of such significance to contemporary Aboriginal and Torres Strait Islander societies. It also aims to encourage indigenous and non-indigenous Australians to write to the Council for Aboriginal Reconciliation about their views on the issues raised.

Direct quotations from Aboriginal and Torres Strait Islander individuals are used in the paper. At a recent national conference on issues relating to indigenous peoples, law, and the environment, a group of Aboriginal women from the north-east coast of Arnhem Land eloquently explained the intricacies of their peoples' relationship with land and sea. Excerpts from their contributions to the *People. Place. Law* conference are gratefully acknowledged.

The paper also draws on material produced by Aboriginal and Torres Strait Islander organisations, anthropologists, government inquiries and other sources which document the relationship between indigenous peoples and the Australian environment.

Different peoples

Aboriginal and Torres Strait Islander peoples belong to diverse, contemporary communities, each containing individuals with different perspectives, life experiences and aspirations. While there are many shared interests based on their status as indigenous Australians, it should be expected that there is a diversity of opinion within communities about all issues, including the significance of land and sea. This paper aims to reflect that diversity.

What is 'country'?

In this context, 'country' means place of origin, literally, culturally or spiritually. It can have the political meaning of 'nation', but refers to a clan or tribal area rather than a nation-state such as Australia. 'Country' refers to more than just a geographical area: it is a shorthand for all the values, places, resources, stories, and cultural obligations associated with that geographical area. For coastal Aboriginal peoples and Torres Strait Islanders, 'country' includes both land and sea areas, which are regarded as inseparable from each other.

Although the significance of land and sea are discussed under various headings, it should be appreciated that individual indigenous persons or groups have in practice a more holistic view of land and sea. That is, land and sea may be viewed by Aboriginal or Torres Strait Islander peoples as central to their identities, their heritage and their economic futures without necessarily analysing the extent to which spiritual, economic or historical significance contribute to their overall importance.

In the beginning . . .

For many Aboriginal and Torres Strait Islander peoples, including those living in urbanised areas of Australia, the significance of land and sea is intimately bound to the spirituality surrounding the origins of landscapes and seascapes, and the animals, plants and peoples that inhabit them. Such creation beliefs are found in most religions. As Helen Nunggalurr, from a clan in north-east Arnhem Land, has explained:

First, all the things in our environment were created by spirit beings which we call Wangarr. They created the different tribes and their languages. During their creation journeys they created animals, plants, waterholes, mountains, reefs, billabongs and so on. Today we can see their tracks in our land and where they stopped we can see their signs. These are the features in our landscape. This is why these places are our sacred areas which we must respect and care for.¹

Indigenous Australians' creation beliefs vary greatly from region to region, but they generally describe the journeys of ancestral beings, often giant animals or people, over what began as a featureless domain. Mountains, rivers, waterholes, animal and plant species, and other natural and cultural resources came into being as a result of events which took place during these Dreamtime journeys. Their existence in present-day landscapes is seen by many indigenous peoples as confirmation of their creation beliefs.

Torres Strait Islanders have many creation stories to explain the origins of their islands, reefs, sea and all the animals and plants important to them. As in Aboriginal Australia, many geographical features visible today provide reminders of the creation journeys of ancestral beings.

Different peoples

Aboriginal and Torres Strait Islander peoples belong to diverse, contemporary communities, each containing individuals with different perspectives, life experiences and aspirations. While there are many shared interests based on their status as indigenous Australians, it should be expected that there is a diversity of opinion within communities about all issues, including the significance of land and sea. This paper aims to reflect that diversity.

What is 'country'?

In this context, 'country' means place of origin, literally, culturally or spiritually. It can have the political meaning of 'nation', but refers to a clan or tribal area rather than a nation-state such as Australia. 'Country' refers to more than just a geographical area: it is a shorthand for all the values, places, resources, stories, and cultural obligations associated with that geographical area. For coastal Aboriginal peoples and Torres Strait Islanders, 'country' includes both land and sea areas, which are regarded as inseparable from each other.

Although the significance of land and sea are discussed under various headings, it should be appreciated that individual indigenous persons or groups have in practice a more holistic view of land and sea. That is, land and sea may be viewed by Aboriginal or Torres Strait Islander peoples as central to their identities, their heritage and their economic futures without necessarily analysing the extent to which spiritual, economic or historical significance contribute to their overall importance.

In the beginning . . .

For many Aboriginal and Torres Strait Islander peoples, including those living in urbanised areas of Australia, the significance of land and sea is intimately bound to the spirituality surrounding the origins of landscapes and seascapes, and the animals, plants and peoples that inhabit them. Such creation beliefs are found in most religions. As Helen Nunggalurr, from a clan in north-east Arnhem Land, has explained:

First, all the things in our environment were created by spirit beings which we call Wangarr. They created the different tribes and their languages. During their creation journeys they created animals, plants, waterholes, mountains, reefs, billabongs and so on. Today we can see their tracks in our land and where they stopped we can see their signs. These are the features in our landscape. This is why these places are our sacred areas which we must respect and care for.¹

Indigenous Australians' creation beliefs vary greatly from region to region, but they generally describe the journeys of ancestral beings, often giant animals or people, over what began as a featureless domain. Mountains, rivers, waterholes, animal and plant species, and other natural and cultural resources came into being as a result of events which took place during these Dreamtime journeys. Their existence in present-day landscapes is seen by many indigenous peoples as confirmation of their creation beliefs.

Torres Strait Islanders have many creation stories to explain the origins of their islands, reefs, sea and all the animals and plants important to them. As in Aboriginal Australia, many geographical features visible today provide reminders of the creation journeys of ancestral beings.

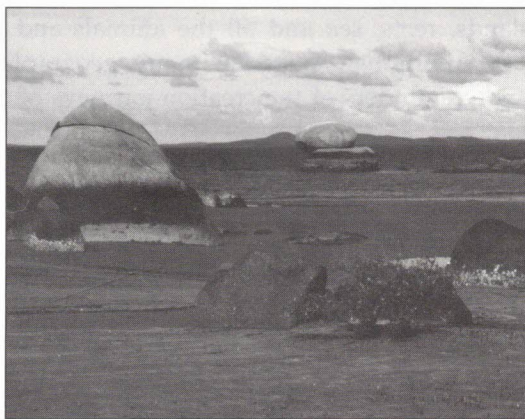


An aerial picture of Mer, the main Murray Island.

For example, the hill on Mer, with its rounded summit and long, sloping side, is Gelam the dugong.

Gelam arrived at Mer from the island of Moa. He came in a log of wood which he had carved in the shape of a dugong. When he arrived he lay down beside Mer facing towards the east. However, when the *naiger* (east wind) blew strongly it blew into his nostrils and so he turned to face the *zai* (south west). Gelam brought with him vegetables, fruit, seeds and spoil. He carried these in his left armlet. After he had settled down he scattered these around and they helped to make Mer fertile and rich in food crops.²

These creation stories explain the origins of the natural world, and form the basis of Aboriginal and Torres Strait Islander peoples' customary laws. They also form the basis of relations between people, and between people and their environment.



A turtle story place, eastern Cape York Peninsula.

Animals and plants are an integral part of ancient spirituality and contemporary kinship systems. According to Helen Nunggalurr:

These [creation] spirit beings, or Wangarr, gave us our totems as they changed from one form to another. Our word for totem is Mandayin. Most of the plants, animals and places around us are totems for one tribe or another. These totems are relations for us. For example, I call the long necked tortoise Maari, which means my mother's mother. This is because the long necked tortoise is sacred to Dhalwangu clan, which is Mitjarrandi's clan, and our two clans are related as grandmother and granddaughter.

Because we are related to most things around us and because we are surrounded by totems, we must respect and care for our environment according to our law.

The following story shows how the creation events of the creation period, or Dreamtime, are still important to indigenous Australians in contemporary life.

Muthali the wild duck travelled from Burrawandji until Maapura. At Maapura she made a spreading sweep of her wings on the earth and made a plain which became a swamp. She said, 'I have made this swamp so the people can have plenty of food to eat.' Then she reached Gulumarri on Elcho Island. From there she went to the Wessel Islands. She heard the noise of the water at Bandanguwamirr and decided to go there to lay her eggs which we can now see as egg shaped black stones.

At each place that she stopped at she spoke a different language, the language of that place. In this way she was teaching us about the importance of speaking our own separate language.

Muthali also landed at Langarra and the people of Langarra have built the school and houses on the place where she landed. Because of the wild duck's journey Ritharrgu, Warramiri, Wobulkarra, Guyamirrili, Gandangu, and Gulungurr people are called sister clans to each other.³

The following story describes the activities of ancestral beings, who are sometimes referred to as 'hero beings' and who often have the power to transform themselves into animal forms during their travels.

Uluru (Ayers Rock) was built up during the creation period by two boys who played in the mud after rain. When they had finished their game they travelled south to Wiputa, on the northern side of the Musgrave Ranges, where they killed and cooked a euro (large wallaby). Then the boys turned north again toward Atila (Mount Connor). A few miles south-west of the Mount, at Anari one boy threw his tjuni (wooden club) at a hare wallaby, but the club struck the ground and made a fresh-water spring. This boy refused to reveal where he had found the water and the other boy nearly died of thirst. Fighting together, the two boys made their way to the table-topped Mount Conner, on top of which their bodies are preserved as boulders.⁴

Such stories explain the presence of all features of the Australian landscape. Aboriginal and Torres Strait Islander peoples who have retained knowledge about their traditional country live in a world

surrounded by reminders of their spiritual association with country. Even in the absence of detailed cultural information, the knowledge that natural features throughout Australia have spiritual origins makes land and sea especially significant to all indigenous Australians.

This special, indigenous association with land has been well documented by many government inquiries. In Western Australia, for example, the 1984 report of the Aboriginal Land Inquiry, chaired by Paul Seaman QC, concluded that the Nyungars (Aboriginal peoples) in the more urbanised south-west of the State have retained an affinity for land which is essentially equivalent to that of Aboriginal peoples living a more traditional lifestyle elsewhere in the State:

Although they cannot now identify particular areas of land as being owned in traditional law by particular ancestors, they have a lively awareness that their forefathers had all those traditional relationships with the land of the South-West which are found today in the most remote parts of the state.

Sacred sites and Dreaming tracks

While all landscape features have their origins in Dreamtime creation stories, there are some places of special significance to indigenous peoples, as Justice Woodward described in the Royal Commission report on land rights in 1974:

Land generally has spiritual significance for Aborigines but because of the form and content of myths relating to it, some land is more important than other land. Certain places are particularly important, usually because of their mythological significance, but sometimes because of their use as a burial ground or important meeting place for ceremonies.

These special places are often referred to as 'sacred sites' — a generic term for different types of places or areas of land or sea. Many sacred sites are places where particularly important events occurred during the Dreamtime. Others are places known as 'increase centres' where special ceremonies are conducted to ensure the wellbeing of particular species. Others are places of great danger, sometimes called 'poison grounds' or simply 'danger places', where it is believed that inappropriate action (such as the killing of a forbidden species, or the entrance of a stranger) will cause severe storms, sickness or even death.

The routes taken by the Creator Beings in their Dreamtime journeys across land and sea, are also of continuing significance to Aboriginal peoples. They link many sacred sites together in a web of Dreaming tracks criss-crossing the country. Dreaming tracks can run for hundreds, even thousands of kilometres, from desert to the coast and crossing through many 'countries'. Stories and songs which relate the creation events that occurred along Dreaming tracks may be shared by peoples in

countries through which the tracks pass. For this reason Dreaming tracks are sometimes known as 'songlines'.

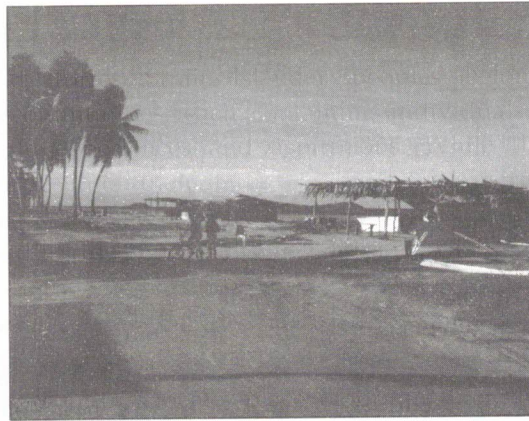
Sacred sites and Dreaming tracks also serve the important function of defining Aboriginal countries. Clan estates, and larger tribal or language areas, are largely defined not so much by rigid external boundaries but by the location and significance of sacred sites, Dreaming tracks and other special places. Sacred sites can provide the focal points and also often the name of clan estates. Similarly, the path of Dreaming tracks within or between estates help to define their size and shape.

Since sacred sites represent the cultural core of Aboriginal and Torres Strait Islander countries, it is not surprising that knowledge about these places has survived across much of Australia, even in places where other cultural knowledge may have been lost. Sacred sites have been documented in recent times in many remote and urban areas and continue to be of great significance to Aboriginal and Torres Strait Islander peoples.

Owning and caring for country

Systems of ownership of, access to and responsibility for traditional Aboriginal clan estates differ from place to place, but there are some common elements which indicate the importance of particular areas to particular people. Membership of a particular clan, and hence an association with a particular clan country, is given at birth. In most, but not all Aboriginal societies, clan membership is patrilineal; that is, passed on from father to child. Sons and daughters retain that clan membership for life, even though they may move away and live on other clan estates (such as a husband's or wife's clan country), or into community settlements or towns.

Clan membership provides access rights to the hunting, fishing and gathering resources of the clan estates, and often also some rights to resources on other related estates.



Beach houses belonging to residents of the Lockhart River Aboriginal community.

Clan members are also responsible for carrying out appropriate ceremonies, observing various taboos, such as restrictions on who can eat and prepare certain foods, and for physically managing the estate's resources, such as by burning the country in the appropriate manner.

Helen Nunggalurr describes some of laws and customs which relate to the use and management of her clan's resources:

When Yolngu people go hunting or fishing they don't take more than they need for their families and we eat all parts of most animals. For example, after we cook turtle we eat the meat, liver, kidneys, guts, fat, flippers, head, heart, and we even use the shell upside down to make soup from the blood. This means nothing is wasted.

Mangrove worms are a totem for the Mandjikay clans. We must eat them in a special way similar to the way Europeans suck spaghetti. If any Mandjikay person passes away, then all people classified as sister or mother are not allowed to eat those worms. Also they are not allowed to eat any other Mandjikay totems like trevally or cockle shells for one or two years ...

Another law is for women. There are certain times when we are not allowed to eat fish, turtle meat or eggs, wallaby, emu or other red meat. If we don't follow this rule our brothers or husbands might have an accident in the bush or out hunting in the sea.

When women go digging for yams in the jungle they are careful to leave the bottom part of the yam in the ground so it will grow again. Then when they go back next year the yams will still be there.

We are also careful about bushfires. People burn the bush soon after the wet season. They do this to make it easier to hunt animals and find honey and to help clear the bush for the new plants to grow. When people burn at the wrong time they can start big bushfires which make the landowners very upset.⁵

It was this inherited association with a particular country and its sacred sites, Dreaming tracks, stories, totems and other features, which in pre-colonial Australia provided Aboriginal peoples with their individual and group identities. The severing of that relationship to a particular country, as happened across much of Australia during the colonial period and into recent times, denied Aboriginal peoples a place in their kinship system, access to resources and their basis of spiritual belief.

The importance of maintaining a connection with their traditional country continues to be of fundamental importance for Aboriginal and Torres Strait Islander peoples' identity and wellbeing across much of Australia today.



*A Mornington Island fisherman spearfishing recently
at Mornington Island. Photo by Bill Humes,
AIATSIS.*

Contemporary indigenous peoples' land and sea management

Indigenous societies, like all societies, are constantly changing and adapting to new circumstances. Over the tens of thousands of years, Aboriginal and Torres Strait Islander peoples have had to adapt to great environmental changes, including, for example, the loss of vast areas of coastal land as the sea level rose by over 100 metres during the last 20,000 years. Over the last 206 years, Aboriginal and Torres Strait Islander peoples have been obliged to adapt to the consequences of colonisation. As a result, contemporary indigenous peoples' interests in land and sea, and the management of their resources, are in many ways different now than they were 206 years ago.



Aboriginal communities' 'traditional' ecological management practices involved the selective use of fire to influence the prevalence and range of plant and animal species in the managed area.

While retaining strong cultural associations with land and sea wherever possible, Aboriginal and Torres Strait Islander peoples are also increasingly involved in contemporary land and marine management, often in partnership with government and other organisations, and are developing programs to secure their economic futures from utilising land and sea resources.

National parks

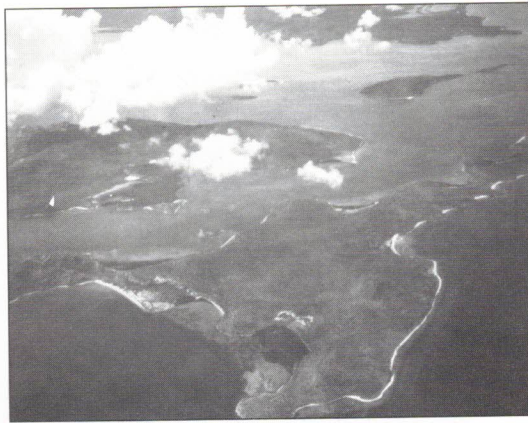
Some national parks in the Northern Territory are owned and jointly managed by Aboriginal communities. Elsewhere, Aboriginal peoples' involvement is increasing — for example, through membership of consultative committees — and some States are also moving towards indigenous ownership and joint management arrangements.



Bill Neidjie, one of the traditional owners of part of Kakadu National Park explaining its management to a visiting community ranger from Cape York Peninsula.

Marine parks

In Queensland, Aboriginal and Torres Strait Islander peoples' involvement in marine park management has been increasing in recent years, beginning with membership of a consultative committee for the Great Barrier Reef Marine Park in 1988. Negotiations are currently underway aimed at joint management of a portion of the Cairns State Marine Park. The recently completed *25 Year Strategic Plan for the Great Barrier Reef World Heritage Area* envisages greater Aboriginal and Torres Strait Islander peoples' control over areas of land, sea and resources relevant to their heritage. In other States and the Northern Territory, less attention has been paid to indigenous peoples' participation in marine park management.



The Flinders Islands, Princess Charlotte Bay, located within the Great Barrier Reef Marine Park, is currently subject to a claim under the Aboriginal Land Act 1991 (Qld). Photo courtesy Great Barrier Reef Marine Park Authority.

Fisheries management

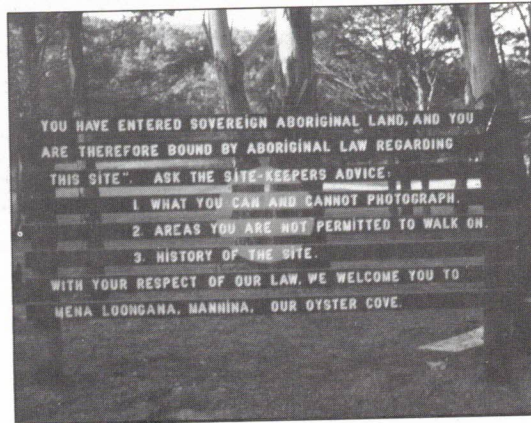
In the Torres Strait, Islanders are members of fisheries consultative committees and have preferential access to future commercial fishing licences. On western Cape York Peninsula, an Aboriginal community ranger at Kowanyama has been appointed a Fisheries Inspector, and the community has successfully negotiated a reduction in commercial fishing effort to protect subsistence fish stocks. Elsewhere, indigenous communities are generally not involved in fisheries management. The final report of the Ecologically Sustainable Development Fisheries Working Group in 1991, however, recommended that there be Aboriginal and Torres Strait Islander membership of all fisheries management advisory committees. The National Strategy for Ecologically Sustainable Development also has as an objective the representation of all significant user groups on new or restructured management advisory committees.

Cultural sites

Throughout most of Australia, processes have been established to consult with Aboriginal and Torres Strait Islander peoples regarding the management of archaeological and other cultural sites. Many communities have undertaken their own research programs to document cultural heritage information, sometimes in conjunction with government agencies such as the Australian Heritage Commission, and with its State and Territory equivalents.

Community rangers

In many indigenous communities in northern and central Australia, local rangers are being trained and employed to undertake a range of land, sea and resource management tasks, including feral animal control, weed eradication, cultural tourism and the management of cultural sites.



1994 is the tenth anniversary of the Aboriginal re-occupation of Oyster Cove, Tasmania, which is a site of historic, cultural and heritage values. The area contains burial grounds, shell middens and stone tool artefacts.

Community resource management agencies

At several locations in northern Australia, such as at Kowanyama on western Cape York Peninsula, Mona Mona on the Atherton Tableland and Nhulunbuy in eastern Arnhem Land, communities have established small independent agencies to develop programs and policies for the environmental and cultural management of their land. Working in conjunction with community rangers and government conservation and resource management organisations, these community agencies represent important indigenous initiatives aimed at re-establishing traditional values and methods in land management, while also incorporating modern resource management techniques.



A flood plain in Kakadu National Park, which is partly under joint management arrangements.

Other land management projects

Many indigenous communities have engaged in Landcare or Greening Australia projects, or have undertaken environmental management contracts under the Federal Government's Contract Employment Program for Aboriginals in Natural and Cultural Resource Management (CEPANCRM), which is administered by the Australian Nature Conservation Agency. That program is designed to promote the utilisation of indigenous Australians' skills by State agencies in a variety of conservation, research and heritage protection tasks.

Aboriginal and Torres Strait Islander peoples' marine management

Several indigenous organisations are also developing proposals to regain greater control over the management of their marine environments. In Torres Strait, the Island Co-ordinating Council is developing a marine strategy which will reflect both the cultural and economic importance of the sea and its resources to Torres Strait Islanders. In eastern Arnhem Land, coastal Yolngu people are developing a plan for the management of their coastal waters, aimed at better protecting their marine sacred sites, the conservation of subsistence resources and greater control over issues such as commercial fishing, shipping and pollution.

Both projects also aim to achieve greater cooperation between indigenous Australians and government marine environment and fisheries managers, and are supported by the Commonwealth Government's Ocean Rescue 2000 program.

Aboriginal and Torres Strait Islander peoples' use of land and sea resources

Aboriginal and Torres Strait Islander peoples throughout Australia continue to be interested in subsistence hunting, gathering and fishing. This is particularly evident in remote areas where indigenous peoples obtain a large part of their diet from these activities. As was established in the Commonwealth Government's recent Coastal Zone Inquiry, many Aboriginal and Torres Strait Islander peoples in more urban regions also regularly engage in hunting and fishing for traditional foods, which continue to comprise a significant part of their non-cash economy.



Rita Gutchen and Joanna Hunter working at the Ngoonbi Cooperative Farm, Kuranda. Photo by Maureen MacKenzie, from the AIATSIS Pictorial Collection.

Aboriginal and Torres Strait Islander peoples' commercial enterprises utilising land and sea resources include:

- commercial fishing and mariculture such as oyster and pearl farming;
- cattle farming and other agricultural enterprises;
- cultural tourism; and
- art and artefact making.

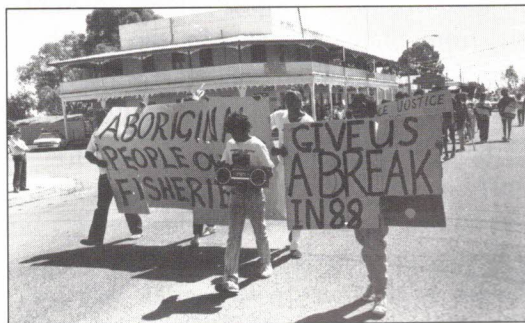
Current recognition of indigenous peoples' land and sea interests

While Aboriginal and Torres Strait Islander peoples throughout Australia may seek to maintain their relationships with traditional land and sea 'countries', their opportunities for doing so vary from State to State and from region to region, depending on local history, government policies and legislation.

Hunting, gathering and fishing rights

Across northern Australia, Aboriginal and Torres Strait Islander peoples are exempt from most fisheries regulations, enabling them to pursue traditional fishing practices, and special measures have been established to encourage them to engage in commercial fishing enterprises. In most of southern Australia, however, there is no government special recognition of Aboriginal peoples' fishing, which has led to conflict with fisheries managers and has resulted in very little involvement by indigenous Australians in commercial fishing.

In New South Wales, Victoria, Tasmania and South Australia, bag limits on recreational fishers apply to indigenous Australians, limiting their ability to obtain traditional seafoods to feed their extended families.



Members of the Aboriginal community at Brewarrina, New South Wales, demonstrating about their lack of ownership and control over local fish traps, as well as about deaths in custody, during Fisheries Week, October 1987. Photo by Sandy Edwards, from the AIATSIS Pictorial Collection.

In Queensland, all Aboriginal and Torres Strait Islander persons who fish according to Aboriginal traditional fishing or Island custom are exempt from bag and size limits. Similar exemptions apply in the Northern Territory and Western Australia. Western Australia is the only State where southern Aboriginal peoples have equal fishing rights to those in the north.

The lack of recognition of traditional fishing rights is regarded by southern indigenous peoples as a denial of their identity and a restriction of their cultural expression. Southern indigenous Australians are frequently prosecuted and sometimes jailed for breaches of fisheries regulations, but have expressed their determination to continue to exercise what they regard as their traditional right to fish.

Even in areas where customary fishing rights have been recognised, indigenous Australians have expressed concern that they are currently given little opportunity to be involved in overall fisheries management, that their subsistence fishery stocks are not being adequately managed and that little financial benefit flows to indigenous peoples from the commercial exploitation of traditional resources. In a submission to the Coastal Zone Inquiry, Aboriginal people from the south coast of New South Wales, through the Wagonga Local Aboriginal Land Council stated:

Over recent years we have witnessed a rapid decline of shellfish on the rocks and estuaries, almost to the point of extinction. This has caused much concern amongst our community members. The shellfish and molluscs collected by us hundreds of years ago have earned European fishers thousands of dollars over the years, as well as export taxes for the Government.

Recognition of indigenous peoples' rights to hunt on land also varies considerably from State to State. In the Northern Territory, Western Australia and South Australia, grazing leases contain reservations which permit indigenous hunting to continue (although sometimes only with the graziers' permission), whereas in other States today no such provisions exist.



Kitty Napaljarri Oldfield, Rosie Nangala Flemming, Peggy Napurrurla and Lucy Napaljarri Kennedy, hunting goana, Yuendumu, Northern Territory. Photo by Jon Rhodes, from the AIATSIS Pictorial Collection.

Protection of cultural sites

Commonwealth, State and Territory legislation provide some protection of indigenous Australians' archaeological and sacred sites. However, for many years indigenous Australians have expressed concern that the level of protection is inadequate, and that the decision-making processes involved are not sufficiently under their control. Even where there is substantial indigenous peoples' involvement in decision-making, the ultimate power to protect or destroy Aboriginal and Torres Strait Islander peoples' sites generally rests with a government minister.

On Aboriginal-owned land, which predominantly lies in central and northern Australia, Aboriginal peoples are able to exercise a considerable degree of control over their significant sites. In many parts of the more developed southern regions, Aboriginal peoples have been powerless to protect places which are very important to them. The Wagonga Local Aboriginal Land Council submitted to the Coastal Zone Inquiry:

Our kitchen middens were excavated, and the shell deposits used for cement and road base. Homes have been built on middens, and coastal areas that were once frequented by our people, paths have been forged through our campsites and middens that are located on sand dunes and rocky outcrops. This is our heritage being destroyed, and we have been helpless to stop this destruction. We are downright disgusted and insulted by the respect shown by Europeans to our culture and heritage.

Land rights

Most States and Territories have made provision for some land to be returned to either or both indigenous ownership and control. However the extent to which that ownership and control is achievable varies greatly between jurisdictions, as indicated in the following summary.

The Northern Territory: The Commonwealth's *Aboriginal Land Rights (Northern Territory) Act 1976* enables Aboriginal peoples in the Northern Territory to claim, and be granted, unalienated crown land on the basis of traditional ownership, and to exercise substantial control over mining and other activities on their land. Determinations of claims are made by an independent Aboriginal Land Tribunal. The *Cobourg Peninsula Aboriginal Land and Sanctuary Act 1981* confers title to the Gurig National Park land on a Land Trust. Small pastoral lease excision areas can also be claimed under legislation.

New South Wales: The *Aboriginal Land Rights Act 1983* provides for a claim process over certain categories of crown land. Determinations of claims are made by the New South Wales Government on advice from government departments.

Victoria: Under the *Aboriginal Land Act 1970*, *Aboriginal Land (Northcote Land) Act 1989*, *Aboriginal Lands Act 1991*, and *Aboriginal Land (Manatunga Land) Act 1992*, and the Commonwealth *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*, grants of small parcels of land have been made to Aboriginal peoples.

Queensland: The *Aboriginal Land Act 1991* and the *Torres Strait Land Act 1991* provide for the granting of inalienable freehold title to existing Aboriginal and Torres Strait Islander reserve land and Trust Areas. Also under the Act, vacant crown land outside towns and cities can become available for claim if so gazetted by the Government. National parks can also be claimed if gazetted as available for claim, but must be immediately leased back to the Government.

Western Australia: The *Aboriginal Affairs Planning Authority Act 1972* enables Aboriginal land to be vested in Aboriginal Land Trusts. Some former Aboriginal reserves have been transferred to Aboriginal Land Trusts, but most Aboriginal reserve land in Western Australia remains under direct government ownership and control.

South Australia: In South Australia crown land can be granted under the *Aboriginal Land Trust Act 1966* to the Aboriginal Land Trust, which leases the land to local Aboriginal groups. In the north of the State, land has been granted as inalienable freehold to traditional Aboriginal owners

under provisions of the *Pitjantjatjara Land Rights Act 1981* and *Maralinga Tjarutja Land Rights Act 1984*.

Jervis Bay Territory: The Wreck Bay Aboriginal community has been granted a small area of land under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*.

Tasmania: No land claims legislation has been enacted in Tasmania. The Aboriginal Lands Bill 1991 was passed by the Tasmanian Legislative Assembly, but was subsequently rejected by the Legislative Council.

Australian Capital Territory: No land claims legislation has been enacted in the Australian Capital Territory.

Land rights legislation in the Northern Territory is the most accommodating in its recognition of Aboriginal customary interest in land. It has provided a degree of control and security that has enabled Aboriginal owners to determine the pace and nature of engagement with outside interests such as mining and tourism.

Sea rights

Aboriginal and Torres Strait Islander peoples in many parts of the coast view the coastal sea as an inseparable extension of coastal land, and subject to the same characteristics of traditional ownership, custodianship, spirituality and origins in the Dreamtime and indigenous law. To them, the coastal sea is an owned domain in which members of the local clan or family group have primary and even exclusive use and management rights.

Governments, marine management agencies and the general community, on the other hand, view the marine environment as an open commons in which all Australians have legitimate interests, such as commercial, recreational and scientific interests. Because of this fundamental difference in perspective on human interaction with the sea, governments have provided far less recognition of sea rights than land rights.

The *Aboriginal Land Rights (Northern Territory) Act 1976 (Cwlth)* provides indigenous ownership of granted coastal land to the mean low water mark. Under separate legislation, the *Aboriginal Land Act 1978 (NT)* the Northern Territory Government can grant sea closures over areas of coast within two kilometres of mean low-water mark adjacent to Aboriginal lands.

Closed seas are not, however, owned by the adjacent Aboriginal land owners, nor do they have management responsibility for those waters. Closed seas are open to all pre-existing users, including commercial

fishers; they are closed only to fishers obtaining licences after the sea has been declared closed, and also to cruising sailors. In practice, since most commercial fishing vessels are owned by companies, new fishers in company boats continue to have access to closed seas.



Gurig National Park is jointly managed by the traditional Aboriginal owners and the Conservation Commission of the Northern Territory. There is currently no provision for joint management of the adjacent Cobourg Marine Park which also lies within the same Aboriginal people's sea country.

The *Aboriginal Land Act 1991(Qld)* and *Torres Strait Islander Land Act 1991(Qld)* both provide for the possibility of claiming tidal land if it is gazetted as claimable by the Government. Current Aboriginal reserves, and Trust Area leases, provide indigenous control only to the high water mark. The native title to Mer (Murray Island) only applies (so far) to the land area of the island.

No other land rights Acts or land grants in other States provide control by indigenous Australians below high water mark.

Native title on land and sea

The High Court native title decision

On 3 June 1992, the High Court decided that the Meriam people of Torres Strait hold a common law native title to Mer (Murray Island). The court also implied that native title continues to exist elsewhere in Australia, wherever it has not been extinguished by governments and provided that the local Aboriginal or Torres Strait Islander groups have maintained a relationship with their traditional country based on customary law.

Legislative recognition of this historic High Court decision is contained in the *Native Title Act 1993 (Cwlth)*, which protects any surviving native title and sets up a system of tribunals to enable native title claims to be registered and determined. Several State and Territory governments have also developed legislative responses to the decision.

Native title differs from other forms of indigenous land ownership in that it does not arise out of a grant from a government, but is rather a pre-existing customary ownership of land which has survived since pre-colonial times. Although the so-called Mabo decision was only made in 1992, the High Court has determined that native title has always been a part of Australian common law.

The implications of native title

While the full implications of the native title High Court decision and legislation will only become clear over time, at least two broad implications are already obvious.

Firstly, there is now an opportunity for at least some Aboriginal and Torres Strait Islander groups to receive formal, legal recognition of their long-held claims of customary ownership of their traditional country. In practice it may be that such full recognition may only be possible over areas of vacant crown land, national parks and other undeveloped government land, and perhaps only in remote areas of Australia where it has been possible for indigenous peoples to maintain an association with their land based on customary law.

Secondly, the existence of native title in Australian common law has confirmed the status of all Aboriginal and Torres Strait Islander peoples

as the first owners of all of Australia. This in principle recognition, which replaces the former legal fiction of *terra nullius* (the empty land), considerably strengthens the long-held view of indigenous peoples that their inherent rights to use and manage Australia's land and sea resources must be recognised. Even Aboriginal and Torres Strait Islander peoples who may not be able to make successful native title claims to particular traditional estates and whose pre-existing rights have been extinguished could expect to have a greater role in, and benefits from, the management of Australia's land, seas and resources.

Native title in the sea

The legal and administrative implications of native title in the sea are currently less well understood than on land, primarily because the High Court was not required to make a determination on native title in the waters surrounding Murray Island in the Mabo case.

In Aboriginal and Torres Strait Island societies, however, there is no such confusion. The submission from the Northern Land Council to the Coastal Zone Inquiry states:

For Australia's indigenous coastal and island people, the relationship and sense of belonging to 'sea country' is as elemental as their affiliations with the land.

That is, the boundaries of traditional clan countries extend into and include areas of the sea. It follows, therefore, that traditional rights to the resources of clan estates included rights to use and control resources in the sea. The sea also contains sacred sites and Dreaming tracks and was created in the Dreamtime along with all its animals, plants, rocks and currents. From an indigenous person's perspective, therefore, there is no distinction between native title on land or sea.

In Australian law, however, because of the existence of commercial fishing licences, shipping lanes and a long history of common access to the sea by all Australians, the exercise of native title in the sea may develop differently than on land. Several native title claims which include claims over areas of sea are currently before the High Court and State Supreme Courts. It may transpire that any native title marine rights in coastal waters are limited to rights of usage and they may not extend to rights analogous to full ownership. So while there may be a right to take fish and other living resources under native title, this may not give rise to ownership of the fish.

Some legal opinion suggests that more comprehensive recognition of indigenous ownership of customary marine estates may eventuate. It

should be noted also that court decisions in New Zealand, Canada and the United States of America have led to settlements involving indigenous peoples being granted equity and other interests in commercial fishing enterprises.

The *Native Title Act 1993 (Cwlth)* provides for continued public access to all those beaches which were accessible to the public prior to the recognition of native title. The Act also confirms crown ownership of all minerals, including those in the sea bed.



Repairing a sprinkler system for citrus trees at the Ngoonbi Cooperative Farm, Kuranda. Photo by Lyn Hobler, from the AIATSIS Pictorial Collection.

Future recognition of indigenous peoples' land and sea interests

Independently of the native title High Court decision, there has been a growing acknowledgment by government authorities and inquiries, of the need for greater recognition of Aboriginal and Torres Strait Islander peoples' interests in land and sea. For example, although Aboriginal peoples' involvement in national park management in the Northern Territory began as a by-product of land rights legislation, the practice of involving indigenous peoples in land and marine management has expanded throughout the country independently of legal rights to land ownership.

In 1986 the Australian Law Reform Commission recommended that governments should recognise indigenous Australians' rights to hunt, fish and gather throughout Australia, subject to certain overriding principles such as the conservation of species and respect for the privacy of landowners. The Law Reform Commission also recommended that land and sea resources should be managed in such a way as to give priority to subsistence use over recreational and commercial use.⁶

The Royal Commission Into Aboriginal Deaths In Custody concluded that the dispossession of indigenous Australians from their land was a factor in the deaths in custody studied. The national report stated:

As an underlying cause in the high rates of detention and deaths in custody of Aboriginal people the question of land needs may not, at first sight, appear to be of immediate significance, and yet the many dimensions of the land issue repeatedly emerge both as direct and indirect factors in the matters investigated by the Commission.⁷

The Royal Commission made numerous recommendations for improving recognition of indigenous Australians' interests in land. These included:

- the establishment of Australia-wide processes for granting land on the basis of traditional ownership, historical association or economic need;
- substantially enhancing indigenous Australians' involvement in national park management, especially through ownership and joint management arrangements; and

- improved consultation procedures to address conflicts between indigenous peoples and land-based industries, including mining and tourism.

The Coastal Zone Inquiry is the most recent Federal Government inquiry to examine how Aboriginal and Torres Strait Islander peoples' interests in land and sea management can be addressed. Its report commended the progress that has been achieved, such as moves towards greater indigenous involvement in some national parks and marine parks, and the work of the Mining Committee of the Council for Aboriginal Reconciliation which has produced *Exploring for Common Ground: Aboriginal Reconciliation and the Mining Industry*. The Coastal Zone Inquiry report also drew governments' attention to previous recommendations which have not been acted upon.

With reference to achieving national recognition of indigenous hunting, fishing and gathering rights, the Coastal Zone Inquiry Final Report states:

In this regard, the Inquiry deplores governments' lack of action in response to the recommendations of previous Inquiries, in particular the Law Reform Commission's 1986 Inquiry into the recognition of Aboriginal customary law.

The Coastal Zone Inquiry has recommended that:

The Council of Australian Governments, in conjunction with representatives of land councils and other indigenous organisations, initiate a process whereby traditional hunting, fishing and gathering rights are recognised by Governments and amendments are made to laws and regulations to incorporate this recognition and provide mechanisms for resolving disputes; in the interim, governments ensure that there are no unreasonable prosecutions relating to these matters under existing laws and regulations.⁸

The Coastal Zone Inquiry has also recommended that:

- the Commonwealth enact legislation, based on the 1986 Law Reform Commission's customary laws report, to establish national criteria for hunting, fishing and gathering rights in the event that agreement for national recognition of such rights under the auspices of the Council of Australian Governments is not achieved during 1994;
- criteria be established by the Australian and New Zealand Environment and Conservation Council and Aboriginal and Torres Strait Islander organisations, for the participation of indigenous peoples in the management of national parks, marine parks and World Heritage areas;
- governments should further support the community ranger system and the establishment of indigenous resource management agencies;

- a national policy on ownership of and access rights to indigenous Australians' cultural property be speedily adopted by the Australian Aboriginal Affairs Council in conjunction with indigenous organisations;
- existing federal heritage legislation and programs should be reviewed by relevant government agencies and indigenous people's organisations, with a view to establishing a national Aboriginal and Torres Strait Islander Heritage Council to fund and advise local communities to record and protect sites and information, and to coordinate government programs; and that
- a national Aboriginal and Torres Strait Islander Fisheries Strategy be developed.

The fisheries strategy would provide an opportunity for all government fisheries agencies to assess Aboriginal and Torres Strait Islander peoples' interests in fisheries and to negotiate appropriate mechanisms for the involvement of indigenous peoples in fisheries management. The strategy would also aim to facilitate greater Aboriginal and Torres Strait Islander peoples' participation in commercial fishing. The Resource Assessment Commission recommended that the strategy be developed by the Ministerial Council on Forestry, Fisheries and Aquaculture in conjunction with ATSIC and other indigenous organisations.



The 1992 native title ruling was awaited eagerly by mainland indigenous Australians. A Mabo rock engraving celebrating the case, at Boudarie landing, Port Hedland. Photo courtesy Diana MacCullum.

Torres Strait Islander peoples' land and sea interests

Some issues relating to Torres Strait Islander peoples' interests have been discussed earlier. However, because these islands, lying between Cape York Peninsula and Papua New Guinea, are quite distinct from Aboriginal mainland Australia, culturally, historically and politically, it is useful to briefly elaborate on the particular land and sea interests of Torres Strait Islanders.

The islands of Torres Strait were not formally annexed to Australia until 1879, and on many islands the indigenous peoples were never removed or displaced. As a result, Torres Strait Islanders have retained a strong cultural identity and a continuous association with their traditional islands and seas from pre-colonial times to the present. It was this continuous association and the maintenance of customary laws relating to land ownership and use that enabled the recognition of native title on Mer (Murray Island).

Torres Strait Islanders' cultures and interests in land and sea are not uniform across the Strait. There are several distinct languages and the islands themselves vary considerably in size and suitability for agriculture. To the east are volcanic islands on which the cultivation of food crops is an important cultural tradition. These islands are surrounded by fringing reefs on which stone fish traps have supplied the Islanders with food for generations, but the deep surrounding seas are not suitable for dugong hunting.

The central islands are coral cays standing only a couple of metres above sea level which are surrounded by large fringing reefs. The western islands are high continental islands and to the north are several low mud islands lying within sight of the Papua New Guinea coast. For central and western Islanders, dugong and turtle hunting are important sources of food, and the cultivation of crops is less important than on the eastern islands.

Most of Torres Strait traditionally was divided among owned marine estates associated with each island. Those marine estates, like the islands themselves, may have been subdivided into smaller family territories. In

much of Torres Strait these systems of customary land and sea tenure continue to exist, but with the exception of Mer such tenure systems are not formally recognised by governments.

Relations with Papua New Guinea

Torres Strait Islanders have a long history of interaction with the people of the coast of Papua. They have some common creation stories and languages and they share the use of marine resources. Under provisions of the Torres Strait Treaty, Australia and Papua New Guinea have agreed to manage the resources of Torres Strait so as to protect the traditional fishing and lifestyles of all the traditional inhabitants. Under these arrangements, Torres Strait Islanders and Papuans can continue to make traditional visits across the international border, subject to some customs and quarantine controls.

Torres Strait Islanders on mainland Australia

Since the 1960s, Torres Strait Islanders have been emigrating to mainland Australia in search of employment and other opportunities, while maintaining contact with their home islands. Settling mainly in coastal centres in Queensland, the Northern Territory and Western Australia, many Islanders have transferred their traditional interests in dugong and turtle hunting and fishing to their new environments. These developments have presented new challenges for the accommodation of Torres Strait Islanders' cultural and subsistence rights in areas where local Aboriginal populations already exist.

In Queensland these potentially competing interests are being addressed by the formation of Councils of Elders along the coast in which Aboriginal elders and Torres Strait Islanders can discuss the allocation of traditional marine resources so that cultural and subsistence demands can be met, while also ensuring that dugong, turtle and other resources are harvested at a sustainable level.

Commercial utilisation of Torres Strait resources

During the last century and throughout most of this century, Torres Strait Islanders have been involved in the commercial exploitation of pearl shell, trochus shell and beche de mer. Initially Islanders worked as low-paid or unpaid divers and crew for European and Japanese merchants and skippers, but Badu Island and some other islands have a long tradition of local ownership and management of fishing enterprises. Islander divers still supply pearl shell to the cultured pearl industry and still harvest and export trochus shell for the manufacture of buttons.

More recently, many Islanders have become involved in harvesting crayfish, which can be undertaken by independent divers operating out of small dinghies.

Future management of Torres Strait land and sea

Having led the way on the recognition of native title, Torres Strait Islanders may now be heading for a political precedent by establishing Australia's first indigenous self-governing region. The expressed aim of the Island Co-ordinating Council is to set up an independent, self-governing territory within the Commonwealth of Australia, equivalent to arrangements for Norfolk Island, or an independent state under the protection of the Federal Government, under arrangements similar to the relationship between the Cook Islands and New Zealand.

The Federal Government has already amended the Aboriginal and Torres Strait Islander Commission Act to establish a Torres Strait Regional Authority. The Authority will exercise ATSIC powers and functions with respect to the Torres Strait Islanders in the Torres Strait, and it will be provided with funds currently allocated by ATSIC in respect of the Torres Strait. Whatever the outcome of these political developments, it is clear that Torres Strait Islanders are moving towards substantial control over their traditional islands, reefs and sea.

To what extent this control will mean a return to local, island-based autonomy for land and marine estate management remains unclear. However, the Meriam people have already indicated their preference for such localised control by recently declaring an exclusive economic zone around the Murray Islands. Though not enforceable under current legal arrangements, the declaration was aimed at encouraging negotiations with commercial fishers to respect the traditional marine rights of Murray Islanders and to enter into commercial agreements with them for the exploitation of marine resources.



*The children of the Torres Strait deserve sustainable
land and sea management practices. Photo by
B. Peisley, Promotion Australia.*

International developments

All Australians should also be aware of the role of international conventions and other agreements relating to the domestic recognition of indigenous peoples' land and sea interests. There is increasing international recognition that the protection of basic human rights for indigenous peoples should include measures to recognise their rights and interests in land and sea. Relevant international conventions which relate to recognition of hunting, fishing and gathering rights, and rights to protect and manage indigenous environments include:

- the International Labor Organisation's Convention 169 on Indigenous and Tribal Peoples;
- the International Covenant on Civil and Political rights;
- the International Covenant on Economic, Social and Cultural Rights;
- the Convention on Biological Diversity

Of these, the International Labor Organisation's Convention 169 provides the most comprehensive recognition of indigenous land and sea interests. This Convention was adopted by the ILO in 1989 and Australia is still considering whether to ratify it.

Activities by the United Nations which explicitly call on member states to recognise indigenous peoples' environmental interests include:

- the 1992 Rio de Janeiro Declaration on Environment and Development;
- Agenda 21 which emerged from the United Nations Conference on Environment and Development; and
- the Draft Declaration on the Rights of Indigenous Peoples, amongst others.

The Draft Declaration contains many preambular and operative paragraphs asserting cultural, environmental, economic and resource rights for indigenous peoples.

Conclusions

Understanding the importance of country to indigenous Australians involves a recognition of the centrality of particular areas of land and sea to the identity, culture and social structure of particular groups of Aboriginal and Torres Strait Islander peoples. It involves a recognition of the significance of sacred sites, the contemporary importance of hunting, fishing and gathering, and the need to secure an independent economic base while maintaining traditional associations with land and sea. It also involves a recognition of the effects of dispossession and the importance of indigenous peoples' efforts, and governments' policies, on recognising, rebuilding and maintaining links with traditional country.

The benefits to non-indigenous Australians of a greater understanding of the importance of country in Aboriginal and Torres Strait Islander societies are many. Such an understanding would improve relations between indigenous and non-indigenous Australians, and so is central to the achievement of reconciliation. It would also result in greater community support for special measures to accommodate indigenous peoples' interests in land and sea, such as land and sea rights, hunting, fishing and gathering rights, mechanisms to involve indigenous peoples in land and sea management, and improved access to commercial fishing.

Short term benefits include improved communication between indigenous peoples, government agencies, industry and community groups. In the longer term, the benefits should include enhanced economic independence for indigenous communities and individuals, as well as greater opportunities for indigenous Australians' cultural expression and development. Australia's international human rights reputation will be enhanced if indigenous Australians' rights are better recognised, and the general Australian community should benefit from an improvement in the economic and social circumstances of indigenous Australians. A greater community understanding of the importance of land and sea to Aboriginal and Torres Strait Islander peoples would also benefit the management of the environment, and hence all Australians.

The recently tabled *Coastal Zone Inquiry Final Report* contains several key recommendations relating to recognition of indigenous land and sea interests, some of which are reproduced earlier in this paper. These recommendations were developed in consultation with indigenous

peoples and organisations in every state and territory, and are presented in the context of previous inquiries and the failure of governments to implement previous key recommendations. These recommendations deserve endorsement and implementation.

The Australian Nature Conservation Agency (ANCA) has recently hosted a national conference on indigenous Australians' land and sea management. A key purpose of the conference was to review the recommendations of previous conferences and inquiries and to make further recommendations on effecting greater recognition of Aboriginal and Torres Strait Islander peoples' land and sea management rights and interests.

Among the issues addressed in the Coastal Zone Inquiry recommendations and the ANCA conference discussions are the:

- national recognition of indigenous Australians' hunting, fishing and gathering rights;
- need to give priority to subsistence use over commercial or recreational use of resources;
- recognition of indigenous peoples' rights to manage marine as well as terrestrial environments, including areas within national parks, marine parks and world heritage areas;
- need for financial support for indigenous peoples' environmental management agencies and community ranger employment and training;
- mechanisms to ensure that indigenous peoples benefit economically from the commercial utilisation of their traditional land and sea resources;
- recognition of indigenous peoples' rights to own, protect and manage cultural sites and intellectual and cultural property;
- need for indigenous peoples to be actively involved in environmental research and monitoring to ensure that their interests and priorities are addressed;
- need for indigenous peoples' representation on all boards, commissions, authorities and advisory committees involved with land and sea management, and the
- need for environmental policy units to be established within government environmental management agencies to address indigenous peoples' issues.

These issues and recommendations are in need of urgent attention because Aboriginal and Torres Strait Islander peoples are acutely disadvantaged, and sometimes prosecuted and jailed, as the result of many inappropriate laws and policies. Most Australian governments are currently reviewing their land and sea management laws and policies. Unless the concerns of indigenous peoples are recognised during the development of these laws and policies, Aboriginal and Torres Strait Islander peoples may be further disadvantaged, and Australia's international human rights reputation may be further damaged. Some progress has been made recently with the Federal Government's legislative recognition of native title hunting, fishing and gathering rights.

The Commonwealth is developing a national strategy on world heritage area management, and some states are reviewing the management of their national parks and marine parks. Such strategies and reviews provide an opportunity for the implementation of reforms relevant to Aboriginal and Torres Strait Islander peoples' land and sea interests. It is an opportunity which may only be realised if the Aboriginal and Torres Strait Islander Commission, other indigenous Australians' organisations, and government environment agencies which are committed to reform, receive support from organisations such as the Council for Aboriginal Reconciliation.

The Council, in particular, has the capacity to convince governments, community groups and industry that reforms which recognise Aboriginal and Torres Strait Islander peoples' land and sea interests are in the best interests of the whole Australian community.

Asking ourselves a few questions . . .

- How can we learn to appreciate, respect and understand indigenous Australians' connection to land and sea in Australia by 2001?
- What action should we take to advance the recognition of indigenous Australians' connection to land and sea?
- How can we ensure that, in the long term, the recognition of indigenous Australians' connection to land and sea benefits the Australian community as a whole?
- What are possible options for recognising indigenous Australians' connection to land and sea in a document or documents of reconciliation?

Readers are invited to respond to the issues raised in this paper by sending written submissions to the Aboriginal Reconciliation Unit, for consideration by staff in the unit and the Council for Aboriginal Reconciliation.

Submissions should be sent in written form, or on a 3.5" computer disk, before 30 June 1994, to:

The Assistant Secretary
Aboriginal Reconciliation Unit
Locked Bag 14
Queen Victoria Terrace
Parkes ACT 2600
Telephone (06) 271 5120
Facsimile (06) 271 5158

Endnotes

- 1 Helen Nunggalurr, 'How do we care for our environment? How does kinship tie in?', in 'Environmental Management: A Matter of Kinship', pp. 21-25 at p. 24 in J. Wurm, (ed.), *People. Place. Law: Conference Report*, 8-11 September, Australian Museum, Environmental Defender's Office, Sydney, 1993.
- 2 S. Passi, J. Rice, L. Salee, B. Zaro, E. Day, F. Barsa, and B. Day, *Murray: Island of Torres Strait*, Far Northern Schools Development Unit, Thursday Island, p. 2.
- 3 Joy Gayura Dhurrkay, 'How the Wangurri and Warramiri clans relate to Langarra', in 'Environmental Management: A Matter of Kinship', pp. 21-25 at p. 24 in J. Wurm, (ed.), op.cit.
- 4 From R. Layton, *ULURU: An Aboriginal history of Ayers Rock*, Australian Institute of Aboriginal Studies, Canberra, 1989, p. 5.
- 5 Helen Nunggalurr, op.cit., p. 25.
- 6 The Law Reform Commission, *The Recognition of Aboriginal Customary Laws*, Volume 2, Australian Government Publishing Service, Canberra, 1986, pp. 200-201.
- 7 Royal Commission Into Aboriginal Deaths In Custody, *National Report*, Volume 2, Australian Government Publishing Service, Canberra, 1991, p. 462.
- 8 Resource Assessment Commission, *Coastal Zone Inquiry Final Report*, Australian Government Publishing Service, Canberra, 1993, p. 184.

References and further reading:

Beckett, J., *The Torres Strait Islanders: Custom and Colonialism*, Cambridge University Press, Cambridge, 1987.

Breeden, S. and Wright, B., *Kakadu: Looking After the Country — the Gagudju Way*, Simon Schuster, Brookvale, 1989.

Gordon, T., *Milbi: Aboriginal Tales from Queensland's Endeavour River* (translated by John Haviland), Australian National University Press, Canberra, 1979.

Layton, R., *Uluru: An Aboriginal History of Ayers Rock*, Aboriginal Studies Press, Canberra, 1989.

Passi, S., Rice, J., Salee, L., Zaro, B., Day, E., Barsa, F. and Day, B., *Murray: Island of Torres Strait*, Far Northern Schools Development Unit, Thursday Island, 1986.

Peterson, N. and Langton M. (eds.), *Aborigines, Land and Land Rights*, Australian Institute of Aboriginal Studies, Canberra, 1983.

Resource Assessment Commission, *Coastal Zone Inquiry Final Report*, Australian Government Publishing Service, Canberra, 1993.

Rose, D.B., *Dingo Makes Us Human: Life and Land in Aboriginal Australian Culture*, Cambridge University Press, Melbourne, 1992.

Royal Commission into Aboriginal Deaths in Custody, *National Report*, Volume 2, Australian Government Publishing Service, Canberra, 1991.

Smyth, D., *A Voice In All Places: Aboriginal and Torres Strait Islander Interests in Australia's Coastal Zone (Revised Edition)*, Consultant's report commissioned by the Resource Assessment Commission, Coastal Zone Inquiry, 1993.

The Law Reform Commission, *The Recognition of Aboriginal Customary Laws*, Volume 2, Australian Government Publishing Service, Canberra, 1986.

Wurm, J. (ed.), *People. Place. Law : Conference Report*, 8–11 September, Australian Museum, Environmental Defender's Office, Sydney, 1993.

Publications and other resources available from the Council for Aboriginal Reconciliation or Commonwealth Government Bookshops

Booklets and other printed materials:

Aboriginal Reconciliation — An Historical Perspective

Addressing the Key Issues for Reconciliation — Overview

Australians for Reconciliation Study Circle Kit

Australian for Reconciliation — Working Together Kit

Council for Aboriginal Reconciliation Act 1991 (Cwlth)

*Council for Aboriginal Reconciliation Bill 1991 — Second Reading Speech
by the Minister Assisting the Prime Minister for Aboriginal Reconciliation
— the Hon. Robert Tickner M.P.*

Council for Aboriginal Reconciliation, Annual Report 1991-92, 1992-93

*Council for Aboriginal Reconciliation, Triennial Strategic Plan, 1992-93,
1993-94, 1994-95*

Council for Aboriginal Reconciliation Newsletter — Walking Together

*Exploring for Common Ground: Aboriginal Reconciliation and the Australian
Mining Industry*

*Extract from the Royal Commission into Aboriginal Deaths in Custody,
National Report, Volume 5, Chapter 38, The Process of Reconciliation*

*Making Things Right: Reconciliation after the High Court's Decision on Native
Title (only available from Commonwealth bookshops in capital cities)*

*The Little Red, Yellow & Black (and green and blue and white) Book: A short
guide to indigenous Australia*

The Position of Indigenous People in National Constitutions, Conference Report.

Working as One — Reconciliation in the Workplace

Videos:

Walking Together: Talkin' Business; Making Things Right

Talking Together: Women and Reconciliation

Working as One: Reconciliation in the Workplace

Posters:

Talkin' Country

Learning Together

Reconciliation (Sally Morgan)

Talking Together (Women and Reconciliation)

Week of Prayer

Kymel (Together), by Torres Strait Islander artist, Mario Assan